

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CLAUDIA FRANK)	
Claimant)	
VS.)	
)	
RUSSELL STOVER CANDIES)	Docket No. 236,208
Respondent)	
AND)	
)	
HARTFORD ACCIDENT & INDEMNITY)	
Insurance Carrier)	

ORDER

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict on January 26, 1999.

ISSUES

The Administrative Law Judge ordered payment of temporary total disability benefits and medical treatment. Respondent contends the Administrative Law Judge exceeded his jurisdiction because the evidence does not establish claimant sustained accidental injury arising out of and in the course of her employment. Respondent also contends that the Administrative Law Judge exceeded his jurisdiction because the evidence does not support the period of temporary total disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the Order should be affirmed.

Claimant worked for respondent from May 14, 1998, through July 21, 1998, at a job in which she stood on her feet ten hours a day, four days per week. She started noticing problems in her feet a couple of weeks after she began working for respondent. Claimant's left foot began hurting her first, and she began to use her right foot more. She ultimately developed problems with both feet. Claimant also developed back pain on her right side.

Claimant initially treated with Dr. Anthony E. Francis at Irwin Army Community Hospital. Dr. Francis diagnosed plantar fasciitis and lumbar strain from overuse syndrome. Claimant was also examined by Dr. Sergio Delgado. It was his impression that claimant

has chronic plantar fasciitis in both feet, worse on the left, and lumbar pain with right radicular complaints suggestive of nerve compression. It was his opinion that claimant's feet and back problems were caused by prolonged standing at respondent.

Respondent provided claimant's treatment records to Dr. Gary J. Schmidt. Based upon review of the records, Dr. Schmidt concluded that claimant has a lump which would generally be traumatic in origin and was not caused by her work. Respondent argues that Dr. Delgado has not discussed the lump and this fact makes Dr. Delgado's opinions less persuasive than Dr. Schmidt's.

The Appeals Board is more persuaded by the fact that Dr. Delgado has examined claimant while Dr. Schmidt has not. The Board finds credible Dr. Delgado's opinion that the problems with claimant's feet and back are caused or aggravated by her work for respondent.

Respondent's challenge to the period of temporary total disability benefits does not raise a jurisdictional issue and will not be considered on appeal. K.S.A. 44-534a and K.S.A. 44-551.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Bryce D. Benedict on January 26, 1999, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 1999.

BOARD MEMBER

c: Jeff K. Cooper, Topeka, KS
Walter P. Robertson, Junction City, KS
Mark J. Hoffmeister, Overland Park, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director